refining business themselves have deemed it wise to combine the process or processes of other companies with their own. It is very doubtful if any one company owns patents sufficient in themselves to cover the cracking process in a way which is adequate to meet modern competitive conditions. (R. II, 898, 1017; III, 1997.) Certainly no one patent is sufficient. In the absence of agreement between the patent-owning companies, there would be no end of infringement suits against each other. The Master found (R. Vol. I, 611):

> "The respective groups of patents owned by the several primary defendants relate to the same art and general subject matters and the domain covered by each group is so adjacent to the domain covered by each of the other groups as that wasteful litigation was likely to be provoked between them and their development of competing refining processes hindered and perhaps frustrated to the detriment of the public interest."

What, then, is the condition of a refiner who owns no patents and who wishes to continue in business? He must secure a license from a person owning a patent or become an object of suits for infringement. He must have a license or licenses covering a process or processes which are adequate to meet present competitive conditions. The alternative is to go out of business and thus eliminate that amount of competition. If, in order to avoid litigation he must secure licenses from all of the patent-owning companies whose patents he may possibly infringe, the cost of such licenses would be prohibitive. Such a refiner would be at the mercy of each and all of the patent-holding companies. This is particularly true, as pointed out, where he has made large investments in high pressure stills, cracking chambers and apparatus which necessitate his securing a license from a particular patent owner.

It is probably true that this situation was not fully called to the attention of the court below,—that is, that the development of the art, including improvements in the apparatus,

has been such as to bring about an overlapping and conflicting of processes and apparatus to an extent that it would be difficult, if not impossible, for the secondary defendants to continue in business without such protection from the various patent-holding companies as the cross-licensing agreements afford. The position taken by the Government, however, and the prayer for relief asked by the Government, were such as to cause the secondary defendants to believe it unnecessary.

The cross-licensing agreements were essential not only to the protection of the refiners operating under the various groups of patents, but to the development of the industry to keep pace with the demands for the product. The making of these agreements was not pursuant to any plan. There was no concerted action. They were the natural results of developments in a fast developing art which was keyed to the demand for larger production. The demand was for efficiency. As was well said in *United States* v. *United Shoe Machinery Co.*, 247 U. S. 32, 53:

> "No one can tell the strength of the competition there may be in a patent. It may be more than competition; it may be destruction, and the Anti-Trust Act surely does not require the acceptance of that or forbid effort to prevent it. But even if that extreme does not impend, certainly improvement of business and its efficiency can be striven for without offense to the law."

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1930.

No. 378.

STANDARD OIL COMPANY (INDIANA), STANDARD OIL COMPANY (NEW JERSEY), THE TEXAS COMPANY, GASOLINE PRODUCTS COMPANY, ET AL., *Appellants*,

vs.

UNITED STATES OF AMERICA, *Appellee*.

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REPLY BRIEF OF THE PRIMARY DEFENDANTS

FIRST: The Government's brief has greatly limited the field of debate. In the beginning of the separate brief of The Texas Company it was said:

> "It may be stated at the outset that the only part of this record which requires careful examination is that pertaining to contracts Nos. 31, 55 and 74."

The Government's brief, by its necessary implications, has conceded this to be true, as appears from the third subdivision of its argument commencing on page 71. It says (71-72):